

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHH MORTGAGE CORPORATION,

Plaintiff/Counter-Defendant,

v.

MARK B. SCHARE,

Defendant/Counter-Plaintiff.

Case No. 11-11731

Honorable John Corbett O'Meara

**ORDER GRANTING PLAINTIFF'S MAY 20, 2011
AMENDED MOTION TO REMAND**

This matter came before the court on plaintiff PHH Mortgage Corporation's May 20, 2011 Amended Motion to Remand. Defendant Mark B. Schare filed a response June 13, 2011; and Plaintiff filed a reply June 20, 2011. Pursuant to Local Rule 7.1(f)(2), no oral argument was heard.

Plaintiff PHH brought this action against defendant Schare on March 14, 2011, in 45-B District Court in the State of Michigan. Share filed a counter-complaint against PHH on March 28, 2011. Plaintiff PHH then filed a motion to remove the action from 45-B District Court to the Circuit Court for the County of Oakland. Before the motion was heard, plaintiff PHH removed the action to this court on April 20, 2011, based on diversity of citizenship. Shortly after removing the matter to this court, plaintiff PHH realized that removal was improper and filed a motion to remand May 19, 2011, and this Amended Motion to Remand the following day.

The right of removal is vested exclusively in defendants, and a plaintiff who has chosen to commence an action in state court cannot later remove to federal court even to defend against a counterclaim. See Shamrock Oil and Gas Corp. v. Sheets, 313 U.S. 100 (1941); Progressive West Ins. Co. v. Preciado, 479 F.3d 1014 (9th Cir. 2007); General Elec. Capital Auto Lease, Inc. v. Mires,

788 F. Supp. 948 (E.D. Mich. 1992). Because this case was improperly removed by plaintiff PHH, the court will grant its motion.

ORDER

It is hereby **ORDERED** that plaintiff PHH's May 20, 2011 Amended Motion to Remand is **GRANTED**.

It is further **ORDERED** that this matter is **REMANDED** to the Circuit Court for the County of Oakland.

s/John Corbett O'Meara
United States District Judge

Date: June 24, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, June 24, 2011, using the ECF system.

s/William Barkholz
Case Manager